

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2017-009-00279I

Parcel Nos. 05-35-359-004; 05-35-354-001; 05-35-326-005; 05-35-376-002; 05-35-376-001; 05-35-369-001; 05-35-364-008; 05-35-364-007; 05-35-364-004; 05-35-359-005

Nestlé USA – Beverage Division,

Appellant,

vs.

Bremer County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on July 25, 2019. Attorney Daniel Manning, Sr., represented Nestlé USA – Beverage Division (Nestlé). Bremer County Attorney Kasey Wadding represented the Board of Review.

Nestlé owns an industrial property located at 70 6th Avenue NW, Waverly. The following table summarizes the property's January 1, 2017, assessment. (Exs. A1-A10).

Parcel	Site Size (Acres)	Assessed Land Value	Assessed Improvement Value	Total Assessed Value
05-35-359-004	1.000	\$25,000	\$14,700	\$39,700
05-35-354-001	11.000	\$300,000	\$4,344,580	\$4,644,580
05-35-326-005	5.950	\$129,250	\$0	\$129,250
05-35-376-002	0.660	\$16,500	\$14,910	\$31,410
05-35-376-001	0.348	\$5,220	\$0	\$5,220
05-35-369-001	0.920	\$23,000	\$37,740	\$60,740
05-35-364-008	0.980	\$24,500	\$26,660	\$51,160
05-35-364-007	0.240	\$6,000	\$0	\$6,000
05-35-364-004	0.720	\$18,000	\$1,570	\$19,570
05-35-359-005	0.650	\$16,250	\$18,110	\$34,360
Total	22.468	\$563,720	\$4,458,270	\$5,021,990

Nestlé petitioned the Board of Review claiming the subject property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b). The Board of Review denied the petition. Nestlé reasserted its claim to PAAB.

Findings of Fact

The subject property is an industrial manufacturing facility used for human-grade food processing purposes. The improvements were built between 1923 and 1999. It has 355,286 square feet of gross building area (GBA), which include office areas, industrial processing, and warehousing. The 22.47-acre site is also improved with paving, fencing, lighting, gatehouses, and a railroad spur. (Exs. A1-A10).

The record includes two appraisals. Nestlé submitted an appraisal completed by Michael Olson, The Olson Group, Urbandale, Iowa. (Ex. 5). The Board of Review submitted an appraisal completed by Russ Manternach, Commercial Appraisers of Iowa, Inc., West Des Moines, Iowa. (Ex. B). Both appraisers are qualified to appraise the property and testified at hearing.

Additional witnesses at hearing included Nestlé Factory Engineer Terry Brandon and Bob Ehler, President of Vanguard Appraisals.

Terry Brandon

Brandon testified for Nestlé and provided a history and background of the subject property's operations. Brandon has been with Nestlé for twenty-one years and has been the engineering manager at the subject facility since January 2013. Brandon explained that Carnation, a competitor of Nestlé, had previously owned a portion of what is now the subject property. In 1980, Nestlé bought the Carnation facility and joined the two properties into a single manufacturing and warehouse facility. Brandon testified that for about the last three years, most of the subject's factory runs two shifts for five-days with part of the factory running three shifts, five-days a week. He also testified the operation is very successful and there are no plans for changes at the subject facility on the horizon.

The subject facility packages dry-powdered beverage mixes, such as Nesquik®, Carnation Breakfast®, Ovaltine®, and Taster's Choice® instant coffee. Brandon explained Taster's Choice® is made in a different facility in New Jersey, but is packaged at the subject property in Waverly. He testified Nestlé is the world's largest food company with thirty-three manufacturing facilities, not including its Purina or Nestlé Waters divisions. If Nestlé wants to introduce a new product, then a portion of the Waverly plant may be redesigned to accommodate the manufacturing or packaging of that product. Brandon noted this is an ever-changing process based on the taste preferences of consumers. When a new product is being considered, Nestlé relies on its current buildings and operations with the existing capacity to take on and test it because constructing a new building is more expensive than using an existing space. Brandon testified the Waverly plant currently has space available, therefore, when Nestlé has a new product it will look at the subject facility to implement those processes.

Brandon testified about the design of the subject facility and its impact on operations. He also testified about the on-going maintenance and associated costs to keep the facility operating efficiently. Because the building was designed for a specific purpose and has since been added on to and conjoined to the neighboring facility, it does not have a typical product flow that would be found in modern day facilities. Additionally, he asserts the average wall height for the subject's facility is between 23 to 25 feet, although he did not explain how he arrived at that conclusion. The lack of a modern-day production flow results in an increased cost in man power to move materials and product around the factory. Brandon also explained any new expansion to the subject facility for manufacturing purposes would likely have to be vertical because of limited site availability. In his opinion, vertical expansion adds complexity to the manufacturing process to accommodate the movement of materials and product.

He explained there is a lack of adequate warehousing at the subject facility. As a result, a third party supplier in Cedar Falls brings five to six semi-truck loads of product every day to be used in the manufacturing process at a cost of roughly \$900,000 per year. Brandon testified there is no room to store finished product, so once a product

comes off the production line it is immediately loaded and sent to a Nestlé distribution center.

Brandon reviewed the listing of capital improvements and maintenance expenditures provided by Nestlé to both appraisers, which totals over \$2 million in the last four years. (Ex. B, p. 30-31). In Brandon's opinion, some of the items on the capital improvement list are more reflective of on-going maintenance projects; and typically only the items with a \$200,000 or higher estimated cost would be capitalized.

Brandon testified the \$308,000 roof replacement cost in 2016 was a complete replacement of a small section of roof area that reflected approximately 10% of the entire factory roof area. He explained Nestlé partners with a company that does nationwide audits of its facilities and recommends timelines for roof replacement to ensure all factory roofs remain in good condition. Brandon further noted roof maintenance is critical because the subject property is a food manufacturing facility. He explained Nestlé has exacting standards for its facilities that are stricter than most government standards. Brandon also testified that in the next two years he anticipated expenditures of another \$2-million to replace more areas of the roof.

Reviewing the remainder of the capital improvement list included in Manternach's appraisal, Brandon outlined why some of the other expenditures were completed. For example, some interior streets were closed off, exterior streets were added, and security gates and fencing were completed in an effort to improve product and employee safety, as well as to control access to the factory. The cost for this project was \$817,779. (Ex. B, p. 31). In addition, Nestlé invested in some heated sidewalks to increase the safety of its employees during the winter months at a cost of \$530,000. (Ex. B, p. 31).

Brandon explained another safety enhancement decision was made to replace an antiquated man-lift with a special-purpose personnel elevator. The cost of this replacement was reported to be \$519,755, plus \$140,115 for the engineering contract. Manternach did not include these expenses in his real estate cost column. (Ex. B, p. 30).

Additionally, Brandon explained Nestlé has a sustainability promise that impacts its maintenance decisions. For example, specific refrigerants are used in the air-handling units that are less ozone depleting. Based on the foregoing reasons, in Brandon's opinion, the projects listed in Manternach's appraisal reflect on-going maintenance to increase the life of a particular asset and are not capital improvements. In his opinion, maintenance is not an improvement.

Lastly, Brandon noted Nestlé uses a lot of sugar in the subject property's manufacturing process. Nestlé has partnered with a rail company and has its own spur and track mover located on the west and north side of the factory. (Ex. 6, p. 9). Brandon testified Nestlé spends between \$50,000 and \$85,000 annually for the track maintenance, with demurrage charges that have an additional cost of roughly \$200,000 annually. Nestlé receives sugar by both semi-truck and rail, with a negligible cost differential between the two delivery methods. Ultimately, Nestlé prefers rail delivery due its higher volume capability; one rail car has the same volume of sugar as five semi-truck loads.

Brandon did not offer any testimony about the January 1, 2017, fair market value of the subject property.

Bob Ehler

Ehler testified for the Board of Review. He noted Vanguard has assisted Bremer County in the valuation of larger and more complex properties like the subject. Ehler described Vanguard as an appraisal company specializing in mass appraisal and testified the company works with over half of the counties in Iowa and 322 counties throughout the Midwest. He asserts that because of the scope of work Vanguard does in Iowa, they are knowledgeable and maintain a large database of sales in the state. Vanguard uses this data to analyze depreciation and obsolescence, which is then applied to assessments when appropriate.

Ehler provided a history of the assessment process for the subject property and other commercially classified property in Bremer County. He has personally inspected the subject property twice over the years and is familiar with the property. When Vanguard reviewed the assessment of the subject property, Ehler and other staff

inspected the property and verified the assessor's data. The subject's buildings were measured, including floor thickness and wall-heights; and features such as the condition and quality of the man-lift was confirmed. He explained that unlike typical fee appraisers that would rely on a comparative-unit cost method, Vanguard develops a cost approach that is akin to a unit-in-place method whereby every component is individually priced. In his opinion, this is a much more thorough method.

Ehler used one building of the subject property as an example of how the assessment considered every component of replacement cost. (Ex. A2, p. 2-3). He noted BLDG 1, built in 1923, has a description for each component considered in the cost, and then physical depreciation is applied, followed by the application of functional obsolescence and then external obsolescence. The total cost new of this portion of the subject property was estimated to be \$825,587 but after depreciation and obsolescence, its assessed value is \$92,470; or roughly 12% of the cost new. (Ex. A2, p. 3). This detailed process was completed for every improvement comprising the subject facility.

Based on Vanguard's analysis, the subject was adjusted downward 30% for external obsolescence, which Ehler described as being typical for its small town Iowa location. In his opinion, Waverly is a growing community and lies outside the Waterloo metropolitan statistical area, which would have been considered in the determination of external obsolescence.

Ehler explained changes to the subject property would affect its assessment. For example, in 2015-2016 the man-lift that was replaced with a special-purpose elevator would have been updated on the assessor's records. This change alone would affect the assessment because the older feature with more accrued physical depreciation was removed from the property listing and replaced with a more modern elevator with less physical depreciation. While it is only an example of one change, an accumulation of those types of changes affects the assessment.

Ehler explained the subject's site value was based on a method that considers a lower contributory value for each additional acre of land. He testified the first acre of the

subject site was valued at \$50,000, and all the acres after that were valued at \$25,000 per acre.

Ehler testified that \$5,021,990 reflects the total 2017 assessed value of the subject parcels based on the process he described.

Appraisals

The following table summarizes the appraisers' approaches to value and their respective conclusions.

Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Olson	\$2,665,000	Not Developed	\$2,800,000	\$2,700,000
Manternach	\$4,830,000	\$5,020,000	\$5,200,000	\$4,900,000

Olson and Manternach both concluded the highest and best use of the subject property, as improved, is for its continued industrial manufacturing use. (Ex. 5, p. 35; Ex. B, p. 36). Specifically, Manternach testified its current use is for human-grade food processing purposes. He explained this is significant because this type of facility requires government inspections, a higher level of maintenance, and overall higher standards of upkeep than other industrial properties would require.

Olson Appraisal

Olson explained the original building of the subject property was built in 1923, which he noted as a "small portion" of the current existing structure. Beginning in the late 1950s and through the 1960s approximately 160,000 square feet of warehouse and manufacturing was constructed. Olson reported a "major building effort" in 1989 that included nine warehouses, light manufacturing, office additions, and upper levels totaling just over 107,000 square feet. Some smaller areas were added in the 1990s. The majority of the facility is devoted to manufacturing and warehouse areas for receiving materials and sending out finished product, with less than 25,000 square feet dedicated to office, office support, and staff training functions. (Ex. 5, p. 26-28).

Olson reported ceiling heights in the manufacturing areas ranged from 13 feet to 42 feet, with one small area having a ceiling height of 83 feet.

When the Board of Review asked Olson about the importance of wall height, he testified that while there were some areas with higher heights, overall the subject property's wall heights are 21 to 24 feet. Olson did not explain in his report or his testimony how he arrived at this conclusion.

Olson testified he received the capital improvements list, which was also relied upon by Manternach. He did not include it in his appraisal because, in his opinion, the itemized list reflected things every property would have periodically completed.

Olson developed the cost and sales comparison approaches to value.

Olson testified he could determine the actual fair market value of the subject property by the sales comparison approach. However, he also testified he did not develop the income approach because "it was hard enough to find sales let alone rents of a facility of this size and this use" and he did not feel there was anything comparable. Olson acknowledged he did not have any food-grade quality sales in his analysis. He explained the manufacturing and warehouse sales were the best he could find in the market to draw a comparison. Despite acknowledging it was "hard enough to find sales;" he then asserts that his sales comparison approach is "very strong."

For his sales comparison analysis, Olson included five properties located in Iowa. All of the sales were purportedly purchased for some sort of manufacturing use, although none were used for processing human-grade quality food like the subject property. Olson again testified it was hard to find sales and indicated he did not have any real "apples to apples" comparables, but in his opinion these were the most similar in location, size, age, and functionality. Olson explained he relied on CoStar¹; assessor records for each of the comparable properties; and with the exception of Sale 3, he spoke with people involved in the transactions. The following table is a summary of Olson's comparable sales. (Ex. 5, pp. 59-72).

¹ CoStar is a real estate data collection site.

Comparable	Manufacturing Use After Sale	Date of Sale	Sale Price	Site Size (Acres)	Building Size (SF)	Year Built	Sale Price/SF	Adjusted SP/SF
Subject	Food Processing			22.47	355,286	1923-1990		
1 - Imperial Rd Hampton	Conveyor Systems	Feb-14	\$765,000	12.53	71,056	1997	\$10.77	\$7.23
2 - Olive Rd Hampton	Tire/Wheel Assembly	Oct-14	\$1,400,000	13.41	136,810	1982 & 2000	\$10.23	\$8.03
3 - Washington St Mt. Pleasant	Pre-cast Concrete Products	May-14	\$825,000	51.69	230,068	1962-1981	\$3.59	\$4.50
4 - 61st Ave W Muscatine	Furniture Production	Jul-13	\$2,630,000	12.45	181,000	1983-1996	\$14.53	\$9.89
5 - 12th St SE Waverly	Heavy Equipment	Dec-16	\$2,850,000	48.5	298,505	1945-1974	\$9.55	\$8.16

Sales 1, 2, 3, and 4 are one-story steel frame and metal construction; Sale 5 is one-story, concrete block, steel frame and metal construction. Comparatively, the subject is a multi-level structure with a steel and masonry frame and primarily tilt-up concrete precast panels. (Ex. 5, pp. 25-30; Ex. B, p. 32; Ex. A2). Olson testified the majority of the sales are superior to the subject because they are more modernly built and have superior functionality in their layouts.

Olson identified the subject improvements as falling into several categories (light manufacturing/warehouse areas), with varying ceiling height that ranged from 18 feet to 38 feet. (Ex. 5, p. 49-53). He did not provide an average ceiling height of the subject property based on the calculation of floor area. Sales 1, 2, and 3 had ceiling heights ranging from 16 feet to 24 feet. (Ex. 5, pp. 59-63). Olson did not report ceiling heights for Sales 4 and 5. (Ex. 5, pp. 65-67).

Olson adjusted all of the comparable sales downward between 5% and 20% for building size. (Ex. 5, pp. 70-71). He did not explain how the adjustments were determined. Sale 5, which has less than a 60,000 square feet difference in building size, was adjusted downward 5%. This adjustment does not appear to reconcile the subject's design that has roughly 70,000 square feet on a second level.

Olson did not adjust any of the sales for differences in site size compared to the subject property. In his report, he noted site adjustments "considers the land-to-building ratios." (Ex. 5, p. 72). However, he testified this is not always the case and site

adjustments can also be based on the layout (shape) of the site, which may affect market value, or if it had excess land that could be sold or used for expansion. Despite this testimony, Olson did not address whether any of the sales had excess land, or atypically shaped sites that would affect their use for manufacturing purposes. Sales 1, 2, and 4 are roughly half the size of the subject site, whereas Sales 3 and 5 are both roughly twice as large as the subject.

Sales 1 and 2 are located in Hampton. Both were listed for roughly 13 months prior to the sale. Olson adjusted these sales upward 5% for their location due to inferior access to major highways and interstates. (Ex. 5, p. 71). He adjusted them both down 20% for age and condition because Sale 1 was built in 1997 and the subject was mostly built in the 1960's through 1980's.

Olson testified Sale 1 was vacant when it sold and the assessor identified the use of its improvements as being 94% manufacturing. Olson verified the sale with the prior owner and was told that when it sold there were only minor improvements made to the property and it was used for continued manufacturing use.

Sale 2 was approximately 50% tenant occupied when purchased. After the purchase, the owner occupied the other half until the tenant moved out and made way for the property to be fully used by the owner. It was adjusted upward 10% for its inferior quality of construction. Olson reports this adjustment reflects differences in wall heights, finish space, and layout; and overall this property is inferior to the subject. Like Sale 1, Olson reported this property was used for manufacturing purposes before and after its October 2014 sale.

Sale 3 is located in Mount Pleasant. Olson reported and testified that this property was purchased by a tenant (MPC Enterprises, Inc) that occupied 45% of the improvements with plans to lease the remaining space. It is a 51.69-acre site and sold for \$825,000. (Ex. 5, p. 63). Olson testified this property was purchased to manufacture pre-cast concrete products but he was unaware of what the facility was used for prior to the sale.

The Board of Review asserted Sale 3 was a land sale, and asked Olson if he was aware that MPC Enterprises improved the property after its purchase – and it was

purchased for its site. Olson testified he was unaware of that and he acknowledged that he did not confirm this sale with anyone involved in the transaction. Olson was unsure, but acknowledged the sale price indicated a per acre price of roughly \$16,000, which he conceded would reasonably reflect a land sale. He acknowledged that if this were true, it should not be included in his analysis. Manternach also reviewed this sale at PAAB's request and stated that given the price and the size of the site, the improvements did not appear to add any value.

Based on Olson's testimony and the low price of Sale 3, PAAB questions whether it was an arm's-length transaction (tenant purchase); and it appears it is most likely reflective of only a site value. Additionally, its sale price per square foot and adjusted sale price per square foot are extreme outliers compared to the other sales in the record and those that Olson considered. Olson did not reconcile this in his report or during his testimony. For these reasons, we do not find it persuasive and give Olson's Sale 3 no consideration.

Olson testified the prior use of Sale 4 was for the manufacturing of packaging products and it is now used to manufacture furniture. He also reported that while Sale 4 had manufacturing and warehousing components only 35% of it was classified as being used for manufacturing. Olson adjusted this sale upward 5% for its inferior location. He considered it superior in size, quality, age, and condition with a combined downward adjustment of 40% for these elements of comparison. While this property is a more appealing one-story facility compared to the subject's design, Olson offered limited detail on why it is 40% superior to the subject property. He did not identify the ceiling height, the manufacturing-to-warehouse ratio, and we note that while it is reportedly used for manufacturing, it does not appear to require the same heavy manufacturing use like the subject's operations.

Lastly, Olson included Sale 5 as the most recent sale located in Waverly. This is a manufacturer of heavy equipment. Sale 5 has a site size of 48.5 acres compared to the subject site of roughly 22 acres. As previously noted, Olson did not acknowledge or adjust for this difference. This property was adjusted downward 5% for its smaller building size, despite the subject property having very similar square footage on its main

level. Olson adjusted it downward 10% for superior quality noting it had a new roof installed in 2013. Olson said a similar building he appraised in the past had a new roof installed at a cost of well over \$2,500,000. Olson did not explain or reconcile his estimate of cost for the new roof compared to the total sale price of \$2,850,000.

Sale 5 was December 2016 from Terex USA, LLC to CMI Investments, LLC. Prior to the sale, it was not listed on the open market. Olson testified he was not provided with information concerning the relationship of the parties in the transaction. Additionally, the seller leases approximately 10% of the facility as office space. The Board of Review believes the buyer and seller were related parties or parties that were at one time the same business entity; nevertheless, Manternach also used this sale in his sales comparison approach.

After the hearing, Nestlé submitted an affidavit from Olson, in which he states that after reviewing his files, he confirmed the sale with Jason Schaufenduel a production manager for CMI. Schaufenduel told Olson that the Terex and CMI were “completely separate, unrelated entities.” (Olson Affidavit).

Nestlé also offered an affidavit from Joshua Malancuk, President of JM Tax Advocates LLC. Malancuk, like Olson stated that based upon his personal knowledge concerning the two entities “they are separate and distinct from one another.” While he indicated that he had been retained by the Grantor, Terex and subsequently the Grantee CMI in the years 2015 through 2017, he did not indicate any personal knowledge of the sale transaction in December 2016 or the related documents. (Malancuk Affidavit).

Olson testified he gave Sales 2, 3, and 5 the most consideration in the sales comparison approach. He reconciled to a per square foot price of \$7.50 and concluded a value of \$2,665,000 by the sales comparison approach. (Ex. 5, p. 72).

Olson developed the cost approach but testified he would not normally do so because of the age of the subject improvements and the depreciation that needs to be considered. To begin his cost approach, he analyzed and adjusted three 2016 land sales, two located in Cedar Rapids and one in Fort Dodge; all were industrial sites. (Ex. 5, pp. 38-48). He testified he was unable to find any land sales in closer proximity to the

subject property. His search criteria for land sales were industrial zoned sites with more than 10 acres. The sales ranged in size from roughly 11 to 25 acres. After Olson adjusted the sales for differences in location, size, and utility/shape, he concluded a range of value between approximately \$19,000 and \$33,500 per acre. Based on this analysis, he concluded an opinion of \$26,000 per acre or \$585,000 for the subject's total site value. (Ex. 5, p. 48).

Olson testified he relied on MARSHALL VALUATION SERVICE (MVS), a national cost manual, in developing his replacement cost new (RCN). He divided the subject improvements into several categories and established an RCN for each. (Ex. 5, p. 49-53). He determined a base cost for the manufacturing, warehouse, and office areas including consideration of the ceiling heights. For the manufacturing and warehouse portions of the subject property, he relied on the cost associated with an "industrial, light manufacturing Class C" property of average quality. (Ex. 5, pp. 50-52). For the office area, he relied on a Class C property of good quality. (Ex. 5, p. 53).

He included satellite buildings, paving, fencing, the rail spur, and indirect costs to arrive at an estimated RCN of \$27,406,414. (Ex. 5, p. 49). Olson then added his land value to arrive at a total RCN of \$28,000,000 rounded. (Ex. 5, p. 54).

Olson reported accrued depreciation is based on the age-life method and noted the subject improvements are between 27 and 94 years old. (Ex. 5, p. 55). He did not determine, however, an effective age for the subject property or an economic life; and he did not apply depreciation based on the age-life method.

He reported the subject suffers from functional and external obsolescence. (Ex. 5, p. 55). When asked what the external obsolescence was that he had noted, Olson explained the subject is "not a property that is commonly bought and sold in the market place." Essentially, he said it is not a typical type of property on the market for a buyer or seller. First, PAAB notes this testimony conflicts with Olson and Nestlé's assertion the market value of the subject property can be readily established by the sales comparison approach. But as it pertains to depreciation, PAAB notes the parties agree the subject suffers from functional obsolescence due to decades of additions and

conjoining of other property resulting in a layout that is less than optimal for modern day manufacturing processes.

To determine the amount of total depreciation (physical, functional, and external), Olson analyzed Sales 1, 2, 3, and 4 that he included in his sales comparison analysis. In his opinion, the best method of estimating total depreciation is from market sales. (Ex. 5, p. 56). Olson explained he was near completion of his report when he ran across the Waverly property (Sale 5), which he then included in his sales comparison approach. He acknowledged it was an oversight on his part to not include Sale 5 in his depreciation analysis but that this omission would not change his conclusions.

He provided an estimate of RCN for Sales 1-4, which *includes* the land value. He then deducts the sale price of the property to arrive at a difference, which is converted into a percentage he asserts reflects the total depreciation of each property. The following table summarizes his conclusions of total depreciation based on his methodology.

Comparable	Estimate of Total Depreciation
Sale 1	84.5%
Sale 2	84.3%
Sale 3	93.7%
Sale 4	78.1%

The sales have an average of 85.15% total depreciation. In his report, he noted he gave most weight to his analysis of Sale 3, which indicated 93.7% total depreciation. (Ex. 5, p. 57). If Sale 3 was representative of a land sale, then by including it in this analysis, it exaggerates an estimate of depreciation and would correlate to an artificially low conclusion of value. Based on this analysis, Olson concluded a total depreciation of 90%, which he applied to his total RCN of \$28,000,000 that included land value. Olson's January 1, 2017 conclusion of value by the cost approach is \$2,800,000. (Ex. 5, p. 57).

The Board of Review was critical of Olson's cost approach, specifically his estimate of depreciation, for two reasons.

First, Olson included the value of the land in his calculation of total depreciation. When questioned about his methodology for depreciation, Olson testified that because

he was measuring all forms of depreciation, he had to look at the property as a whole and he did not separate out the improvements only. He testified he would only separate the two components (land and improvements) if he were measuring the amount of physical depreciation. Thus, the depreciation he extracted from his sales captured a value for the sales as a whole. This is contrary to the description of the Market Extraction Method. APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 605 14th ed. 2013). In this detailed description, one of the first steps in the extraction of total depreciation from the market is to subtract the value of the land from the sale price. *Id.*

In later testimony, Manternach and Ehler both agreed land value should not be included in any measure of depreciation. Manternach testified land is not included when estimating depreciation for improvements. He further explained any extraction methodology including the land would be highly distorted and lead to an unreliable indication of depreciation. Both Manternach and Ehler explained land is a non-depreciating asset. We agree. Because Olson's method is contrary to recognized methodology, his application of the 90% depreciation to the total estimated replacement cost and land is unreliable.

Secondly, Olson gave Sale 3 most consideration in his opinion of total depreciation. As previously noted, Olson acknowledged that based on its low sale price per acre, Sale 3 may represent only a land sale. Manternach did not use this sale. He testified that based on its sales price, he believes it most likely represents a land sale. He tentatively recalled that to his knowledge, the buyer was not using the improvements but the site was used for storage. Because it appears this sale represents the value of the site only, PAAB notes it should not be included in this type of depreciation analysis. If Sale 3 were removed from Olson's analysis, the average depreciation by the remaining sales is significantly reduced. Nevertheless, because his methodology is incorrect, as previously noted, his conclusions are not reliable.

Despite acknowledging throughout his testimony there were limited sales like the subject property in relation to location, size, and use; and stating he did not find any "apple to apple" comparables; Olson asserts the best indication of value is by the sales

comparison approach and gave it nearly all consideration. His final opinion of value as of January 1, 2017, is \$2,700,000.

Manternach Appraisal

Manternach described the subject property as a human-grade food processing facility with manufacturing, warehouse, and distribution purposes. (Ex. B, p. 30). He submitted a detailed description of the improvements, such as noting the floors are 8-inches thick, wall heights range from 8 feet to 83 feet with an average eave height of 32.6 feet, and provided a breakdown of how he arrived at a weighted average chronological age of 1971. (Ex. B, pp. 30-33).

Because the subject's improvements were first constructed in 1923, Nestlé was critical of Manternach's determination of a weighted average age of 1971. Manternach responded that only 7% of the total existing building area was actually constructed in 1923 and the largest portion built as a single component was completed in 1989. (Ex. B, p. 33). Manternach acknowledged there are some old portions of the subject's buildings and some that are newer, but considering the maintenance that has taken place the effective age is significantly lower.

Manternach testified wall height is a significant factor affecting value for an industrial property. He explained there is a correlation between wall height and sale price, noting that taller wall heights typically have higher sales prices per square foot. This is because there is more storage area, more space for manufacturing equipment, and it is a consideration of value recognized by most appraisers. He also noted the cost for a building with taller walls is higher because it affects the footings required to support the larger building.

Nestlé believes Brandon's testimony of average wall height between 23 feet and 25 feet is more accurate and reliable than Manternach's assertion the average wall height is 32.6 feet. Manternach explained he measured the building as he walked through and did the math. For this reason, he disagrees with Brandon's assertion about the average wall height. He acknowledged a portion of the building with a very tall wall height, but because it is only a very small portion he does not believe it skewed his average.

Nestlé provided Manternach with a list of capital improvements between 2013 and 2016. (Ex. B, pp. 30-31). Manternach testified this is a document he would always request when completing an appraisal. He requested the specific timeframe because he believes it is the most relevant considering his date of value of January 1, 2017. In his opinion, this is information any party interested in purchasing the property would request because it would impact the price they would pay for a property.

Manternach testified the capital improvement list from Nestlé included the improvement description, year completed, and the total cost of each item – but he added the fourth column “real estate cost” as seen in his report. He explained he was appraising the real estate, not personal property. Therefore, in reviewing the list provided to him, he applied his best guess as to whether the improvement was considered real estate or personal property; when he was unsure, he considered it personal property. For instance, the special-purpose personnel elevator Brandon testified about was not included as part of the real estate because Manternach was unsure at the time whether it was related to equipment or if it was an elevator attached to the building, so he did not include it in the real estate cost column. He acknowledged that based on what he knew of Brandon’s testimony regarding the elevator; it was most likely part of the real estate. Based on his analysis of Nestlé’s capital improvement list, he arrived at roughly \$2,200,000 in real estate related costs. (Ex. B, p. 30-31).

Manternach reported the subject property was designed for manufacturing purposes and is functional for that use, but its construction over several decades and phases lowers its functional utility. Considering all of the aforementioned, he determined the subject improvements are average quality and in good condition for its age. (Ex. B, p. 33).

Manternach developed the cost, sales, and income approaches to value and testified all approaches merit some consideration. He did not find any of the approaches to be perfect and testified the cost approach was weakened by the amount of depreciation considered. While he believed the sales comparison approach was a “good approach” and a reliable indicator of value, he acknowledged there were no perfect sales and he would not rely solely on this single approach to conclude a reliable

indication of value for the subject property. He testified there were leases and capitalization rates available for analysis making the income approach also a good approach. Despite any imperfections of each approach to value, he believes they all merit consideration.

Manternach developed an opinion of land value using five comparable land sales. The land sales were between 10.03 and 20.48 acres with an unadjusted sale price between \$18,546 and \$36,621 per acre. After adjusting for differences, the sales indicated a value for the subject site between \$18,546 and \$30,212 per acre. He reconciled to a value of \$25,000 per acre, or \$560,000 for the site. (Ex. B, p. 39).

Land Sales 3 and 4 were purchased for future expansion by the owners of adjacent sites. (Ex. B, Addendum – Land Sale No. 3 & Land Sale No. 4). Manternach adjusted these sales to \$19,342 and \$30,212 per acre; Sale 4 set the upper range sales price per acre and indicated price per acre.

Like Olson, Manternach relied on MVS in developing his estimate of RCN for the subject improvements. He considered the subject to be an average-quality manufacturing building with steel frame and tilt-up concrete walls. He adjusted the main floor building area base cost for HVAC, sprinkler system, elevators, story height, floor area perimeter, current cost multiplier, and local multiplier. He also included costs for upper level office and upper level industrial areas. He concluded an RCN of \$20,794,402; or \$58.53 per square foot², which does not include site-depreciated improvements with an estimated value of \$518,080. (Ex. B, p. 42).

The RCN was adjusted for physical depreciation and external and functional obsolescence. Manternach concluded 67% physical depreciation. He testified he determined an effective age of 30 years and an estimated economic life of 45 years. (Ex. B, p. 40). He concluded an additional 40% for external and functional obsolescence. He testified his research and past information indicated between 30% and 40% is typical obsolescence for similar manufacturing buildings. (Ex. B, p.40). Manternach testified his overall depreciation and obsolescence adjustments totaling 80% were based in part on judgment and market extraction but he did not include this

² \$20,794,402 RCN including soft costs/355,286 square feet of total building area.

analysis in his report. Manternach acknowledged total depreciation of 80% is a sizeable adjustment but considers the age and condition of the subject property as well as its floor plan with multiple additions. In his opinion, it is obvious the subject's improvements have obsolescence because of the numerous additions. Again, we note the record is clear that all parties agree the subject property's functional utility and layout do not meet modern day standards.

After adding the depreciated value of the site improvements and the site value, Manternach concluded a final opinion of value by the cost approach of \$5,200,000. (Ex. B, p. 42).

Manternach relied on five sales for his sales comparison approach. He describes all five as being similar industrial properties like the subject property but acknowledged Sale 1 is the only food-grade manufacturing plant. He testified there are not many food-grade quality properties like the subject that have sold, as most are owner occupied. The following table is a summary of Manternach's comparable sales. (Ex. B, p.44).

Comparable	Manufacturing Use After Sale	Date of Sale	Sale Price	Building Size (SF)	Year Built	Sale Price/SF	Adjusted SP/SF
Subject	Food Processing			355,286	1923-1990		
1 – 6th St Ottumwa	Bottling Plant	May-12	\$7,100,000	352,860	1970-1998	\$20.12	\$23.60
2 – 10th St N Winterset	Seed Warehouse	Feb-15	\$3,550,000	252,609	1992-1997	\$14.05	\$15.85
3 – S 21st St Clinton	Warehouse	Apr-14	\$1,551,000	101,160	1978 w/Add (1987 Avg)	\$15.33	\$16.66
4 - 12th St SE Waverly	Heavy Equipment	Dec-16	\$2,850,000	300,379	1945-1974	\$9.49	\$13.75
5 – N 9th St Indianola	Warehouse	Jan-15	\$6,700,000	265,740	1995-2003	\$25.21	\$21.84

All of Manternach's comparable properties were considered inferior in quality/design compared to the subject property and were adjusted upward between 5% and 8%. He testified that his opinion was based the subject's concrete tilt-up walls, thick floors, sprinkler system, powerful electrical systems, the fact that it is well-lit, and it has a lot of features that many of the comparable sales do not have. In his opinion, an average quality manufacturing building is generally superior to an average warehouse building for the aforementioned reasons. Manternach also testified he considered the

subject's food-grade use compared to the comparable properties' industrial uses in his quality and design adjustment.

Sale 1 is a bottling plant located in Ottumwa and the only food-grade quality comparable in the record. Nestlé asserted Sale 1 was a distribution plant. Manternach testified that while the user (Coca Cola) may distribute what it bottles, it also manufactures the product.

Sale 1 was built in seven phases from 1970 through 1998. Manternach considered this property inferior in quality of construction compared to the subject due to its corrugated steel walls, lower wall heights, and lack of mezzanine. This sale had a 10-year lease in place to a credit worthy tenant at the time of sale, which required a 20% downward adjustment. (Ex. B, p. 44-45; Addendum – Improved Sale 1) Nestlé noted Sale 1 was a leased fee sale and asserted it was a sale-leaseback. Manternach did not believe the latter was a true statement.

Despite the necessary adjustments, Manternach noted Sale 1 had the most similar use to the subject property than any of his other comparable properties. Manternach testified he does not see many food-grade manufacturing facilities sell on the open market, which caused him to have to consider other manufacturing properties.

Sale 2 was a warehouse purchased by a seed company to owner occupy. This property was reported to be in need of roof repairs at the time of sale but Manternach reported it was a newer property compared to the subject and adjusted it downward 25% for this reason. He considered its location in Winterset to be inferior to the subject. (Ex. B, pp. 44-45; Addendum – Improved Sale 2). Nestlé argued that warehouses sell for more than manufacturing facilities. Manternach disagreed with this assertion stating warehouses generally would sell for less because warehouses would not require the same heavy equipment construction such as floor surfaces, lighting, electrical, and wall height that would be required for a manufacturing facility.

Sale 3 was a warehouse Manternach considered inferior in quality because it has corrugated metal walls and is used for general warehouse purposes. This property was vacant at the time of sale but sold above the asking price as a result of multiple bidders. (Ex. B, p. 44; Addendum – Improved Sale 3).

Nestlé questioned Manternach about the functionality of this property compared to the subject's improvements and use. Manternach explained that because this was built as a warehouse, he did not believe it would be "highly suitable" to them because of its inferior quality of construction and lacking features such as an elevated towers for mixing product and it lacks a rail spur.

Sale 4 was the only sale located in Waverly. Terex purchased the property from CMI. Nestlé was critical of Manternach for adjusting this sale upward 25% for condition despite acknowledging he was aware it had a complete new roof a few years prior to the sale, at a large cost, which would have lowered its effective age. This property was used for heavy equipment manufacturing and was purchased for continued manufacturing use. Manternach testified he did not believe Nestlé could use this property for its current operations without extensive renovation.

Manternach reported Sale 4 was unusual because it was not listed for sale on the open market and Terex had previously owned CMI. Further, the seller leased back 10% of the property's office space for a five-year term at \$4.45 per square foot triple net. (Ex. B, p. 44; Addendum – Improved Sale 4). Manternach could not say if the rent was at market rate and also explained that despite attempts he was unable to verify the transaction with the buyer or seller and questions if there were some unusual conditions involved because it was not listed on the market. In his opinion, there were enough unusual circumstances with this sale to make him question its reliability. Although he does not believe it is an arm's-length sale, he did not adjust it for this because of the lack of verification at the time of his report. Despite his concerns, he included it as a comparable because of its recent date of sale and location in Waverly.

After the hearing, the Board of Review submitted an affidavit from Manternach stating he contacted Michael Holman of Skogman Realty who handled the closing of Sale 4. Holman told Manternach this was a private sale and not listed; and the Senior Vice President for Terex, Eric Cohen, signed the purchase agreement as the representative for both Terex and CMI. Holman explained this is typically only done when it is a related party sale. He was unable to supply a copy of the confidential purchase agreement. Given this additional verification of transaction details,

Manternach now believes this sale should be given less weight in his conclusions. (Manternach Affidavit). He testified that if this sale were removed from his analysis, his conclusion of value by the sales comparison approach would increase.

In response to Manternach's affidavit, Nestle submitted an affidavit from Roger A. Strong. Strong is an attorney who represented the buyer (CMI) and his affidavit states the sale "was an arms-length transaction between two separate corporate entities." The affidavit also states Strong reviewed the purchase agreement and Strong represents that Glyn Wheeler signed for the buyer and Eric I. Cohen signed for the seller.

Sale 5 was a vacant warehouse in need of some roof repairs at the time of its sale. This property has a much smaller land-to-building ratio and is a newer building.

Nestlé was critical of Manternach for making land-to-building ratio adjustments because it does not believe it has any remaining site area left for expansion. Manternach explained the subject's land-to-building ratio of 3.4 compared to Sales 1, 2, 3, and 5 having ratios ranging from 2.1 to 2.9 which would be indicative of it having some room for expansion. Sale 4 has a land-to-building ratio of 7.0 but Manternach testified much of the site is located in a flood zone and cannot be used. He also explained this in his report. (Ex. B, p. 46).

Manternach reconciled to a value of \$17.00 per square foot of main floor area; or \$13.59 per square foot when the total building area is considered. He concluded a final opinion of value by the sales comparison approach of \$4,830,000. (Ex. B, p.47).

Manternach also developed the income approach. Nestlé and Olson were critical of this approach, asserting adequate data was not available to reach credible conclusions. Nestlé and Olson assert the information Manternach included was dated and supports their contention data was not readily available. While Manternach acknowledged there is not a lot of lease data available of properties like the subject in similar locations, he does believe there are similar use properties in larger metro areas like Des Moines. Because he does not believe the location is sufficiently similar, he did not include them as comparable leases.

Manternach included seventeen industrial leases. (Ex. B, p. 49). The leases range between \$1.60 and \$4.13 per square foot. Although Manternach reported the

leases “would be adjusted” for a myriad of factors, he did not provide the adjustments or the adjusted leases per square foot. (Ex. B, p. 49). His testimony indicated he conducted a ranking analysis of these leases, rather than applying quantified adjustments. Ultimately, he selected a market rent of \$2.00 per foot for main floor area and \$1.00 per square foot for mezzanine area. (Ex. B, p. 49).

A 12% adjustment for vacancy and collection loss and other operating expenses were considered to arrive at a net operating income (NOI) of \$444,441. (Ex. B, p. 52). Taxes were not included as an expense. Rather the capitalization rate was loaded for taxes to reflect its effect on value, which is typical for determining the market for ad valorem purposes.

Manternach relied on three techniques to support his opinion of a capitalization rate for the subject property: market extraction, the mortgage equity analysis (band of investment), and investor surveys. (Ex. B, pp.53-55). The following table is a summary of the data based on these techniques.

Method	Rate Estimate Data
Mortgage-Equity	8.2%
Market Extraction	7.1%-9.6%
Investment Survey	Industrial \$2M to \$5M – 7.3% \$5M to \$15M – 6.8%

The capitalization rates ranged between 6.8% and 9.6%. Manternach selected 8.5% toward the upper end of the range prior to adjusting for taxes. After loading for real estate taxes a final capitalization rate of 8.86% was used. He arrived at a final indicated value by the income approach of \$5,020,000. (Ex. B, p. 55).

Manternach reconciled to \$4,900,000 giving some consideration to all three approaches to value. (Ex. B, p. 56). As previously noted, he gave the cost approach less consideration due to the subject improvements suffering from large amounts of depreciation and obsolescence that weaken the approach. He reported adequate sales were available to form a credible opinion of value from the sales comparison approach and therefore gave this approach consideration. Likewise, he states the subject is an income property and they are generally purchased based on their income producing

potential. (Ex. B, p. 56). When questioned about his statement regarding the purchase of these properties based on their income potential, Manternach testified this was a general statement. But he believes all commercial and industrial properties could be income producing, therefore he believes it is a valid approach to value. Likewise, he testified he would not rely solely on this single approach to conclude a reliable indication of value for the subject property; and that despite any imperfections of each approach to value, he believes they all merit consideration.

Analysis & Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2017). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount.

§§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

Under Iowa law, there is no presumption that the assessed value is correct. § 441.37A(3)(a). Nestlé bears the burden of proof under section 441.21(3)(b)(1). § 441.21(3)(b)(1). “The burden of proof is one of persuasion” based on all the evidence. *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 397 (Iowa 2009). The taxpayer may still prevail if it establishes its claims by a preponderance of the evidence. *Id.* at 396.

As of January 1, 2017, the subject property was assessed for \$5,021,990. Nestlé asserts the subject property is assessed for more than authorized by law, as provided under Iowa Code section 441.37(1)(a)(1)(b). To prevail on a claim that an assessment is for more than authorized by Section 441.21(1) the law requires two showings. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted). First,

the record must show the property is over assessed; and second, what the fair market value of the property should be. *Id.*; see also *Boekeloo vs. Bd. of Review of City of Clinton*, 529 N.W.2d 275, 276-277 (Iowa 1995). If PAAB “determines the grounds of protest have been established, it must then determine the value or correct assessment of the property.” *Compiano*, 771 N.W.2d at 397. In that case, PAAB “makes its independent determination of the value based on all the evidence.” *Id.*

In Iowa, property is assessed for taxation purposes following Iowa Code section 441.21. Iowa Code subsections 441.21(1)(a-b) require property subject to taxation to be assessed at its actual value, or fair market value. *Soifer*, 759 N.W.2d at 778.

“*Market value*” is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property.

§ 441.21(1)(b).

In determining market value, “[s]ales prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at market value.” *Id.* Using the sales price of the property, or sales of comparable properties, is the preferred method of valuing real property in Iowa. *Id.*; *Compiano*, 771 N.W.2d at 398; *Soifer*, 759 N.W.2d at 779 n. 2; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). “[A]bnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value”

§ 441.21(1)(b). Abnormal transactions include, but are not limited to, foreclosure or other forced sales, contract sales, discounted purchase transactions, or purchases of adjoining land or other land to be operated as a unit. *Id.*

The first step in this process is determining if comparable sales exist. *Soifer*, 759 N.W.2d at 783. If PAAB is not persuaded as to the comparability of the properties, then it “cannot consider the sales prices of those” properties. *Id.* at 782 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86, 88 (Iowa 1977)). “Whether other property is sufficiently similar and its sale sufficiently normal to be considered on

the question of value is left to the sound discretion of the trial court.” *Id.* at 783 (citing *Bartlett & Co. Grain*, 253 N.W.2d at 94).

Similar does not mean identical and properties may be considered similar even if they possess various points of difference. *Id.* (other citations omitted). “Factors that bear on the competency of evidence of other sales include, with respect to the property, its ‘[s]ize, use, location and character,’ and, with respect to the sale, its nature and timing. *Id.* (other citations omitted). Sales prices must be adjusted “to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments”. *Id.* (other citations omitted). “[A] difference in use does affect the persuasiveness of such evidence because ‘as differences increase the weight to be given to the sale price of the other property must of course be correspondingly reduced.’ ” *Soifer*, 759 N.W.2d at 785 (quoting *Bartlett & Co. Grain*, 253 N.W.2d at 93).

“A party cannot move to other-factors valuation unless a showing is made that the market value of the property cannot be readily established through market transactions.” *Wellmark, Inc. v. Polk Cnty. Bd. of Review*, 875 N.W.2d 667, 682 (Iowa 2016). Where PAAB is convinced comparable sales do not exist or cannot *readily* determine market value, then other factors may be used. § 441.21(1)(b); *Compiano*, 771 N.W.2d at 398 (citing *Soifer*, 759 N.W.2d at 782); *Carlson Co. v. Bd. of Review of City of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997); § 441.21(2). If sales cannot readily establish market value, “then the assessor may determine the value of the property using the other uniform and recognized appraisal methods,” such as income and/or cost. § 441.21(2).

[A]ssessors are permitted to consider the use of property as a going concern in its valuation. *Riso v. Pottawattamie Cnty. Bd. of Review*, 362 N.W.2d 513, 517 (Iowa 1985). In *Maytag Co. v. Partridge*, 210 N.W.2d 584 (Iowa 1973), an expert opined that the assessed value of Maytag’s machinery should be based on its secondary resale value. The Iowa Supreme Court rejected that approach, noting “the rule is that an assessor must also consider conditions existing at the time and the condition of the property in which the owner holds it.” *Id.* at 589. When an assessor values property as a

going concern, “he is merely following the rule that he must consider conditions as they are.” *Soifer*, 759 N.W.2d at 788 (quoting *Maytag Co.*, 210 N.W.2d at 590). The assessor is “recognizing the effect of the use upon the value of the property itself. He is not adding on separate items for good will, patents, or personnel.” *Id.*

In support of its position, Nestlé submitted an appraisal completed by Mike Olson. The Board of Review offered its own appraisal by Russ Manternach. The appraisers’ conclusions are summarized in the table below.

Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Olson	\$2,665,000	Not Developed	\$2,800,000	\$2,700,000
Manternach	\$4,830,000	\$5,020,000	\$5,200,000	\$4,900,000

Manternach concludes a value slightly lower than the assessment. Yet the Board of Review asks PAAB to affirm the assessment because two of Manternach’s three approaches to value support the January 1, 2017, assessed value. (BOR Closing Summation, p. 5).

Conversely, Nestlé argues the sales comparison approach alone is the preferred valuation method under Iowa law and should be solely relied upon to establish the actual value of the subject property. Nestlé asserts Olson and Manternach “testified that sufficient sales data exists from which to draw a comparison.” (Nestlé Brief, p. 6).

While Olson testified he believed he could determine the actual fair market value of the subject property by the sales comparison approach, he offered more testimony to the contrary. Olson acknowledged throughout his testimony that there were limited sales like the subject property in relation to location, size, and use; and he was unable to find “apple to apple” comparisons. He testified he did not develop the income approach because “it was hard enough to find sales let alone rents of a facility of this size and this use” and he did not feel there was anything comparable. (Emphasis added). Olson acknowledged he did not have any food-grade quality sales, like the subject property, in his analysis; and he explained manufacturing and warehouse sales were the best he could find in the market to draw a comparison. Despite repeatedly

admitting it was “hard enough to find sales,” he asserted the best indication of value is by the sales comparison approach and gave it nearly all consideration.

In contrast to Nestlé’s assertion that Manternach “testified that sufficient sales data exists from which to draw a comparison,” (Nestlé Brief, p. 6) Manternach actually testified he did not find any of the approaches to be perfect. While he believed the sales comparison approach was a “good approach” and a reliable indicator of value, he acknowledged there were no perfect sales and *he would not rely solely on this single approach to conclude a reliable indication of value for the subject property.* (Emphasis added). Despite any imperfections of each approach to value, he believes they all merit consideration. The Board of Review asserts Nestlé wants PAAB to consider only the sales comparison approach to value given the limitations of Olson’s appraisal. (BOR Closing Summation p. 3). It contends that given “the improvements made to the property” totaling close to “\$4 million [...] from 2013 to 2016,” Nestle is hard pressed to claim the property is over assessed. (BOR Closing Summation p. 4). It further urges PAAB to “consider using multiple appraisal techniques when the comparable sales approach is not sufficiently comparable to the subject property.” (BOR Closing Summation p. 5). It highlights that the properties considered by the appraisers did not include human food processing and all of the properties require adjustments.

After consideration of the evidence and arguments, we find the Board of Review has demonstrated the sales approach alone cannot readily establish the subject property’s fair market value. *Wellmark, Inc.*, 875 N.W.2d at 682 (“[T]he burden of persuasion rests on the party seeking to show that market data cannot readily establish market value before proceeding to the other-factors valuation approach.”). Accordingly, we consider all of the approaches developed and in the record.

Additionally, we find substantial evidence shows the subject property’s assessment is more than its market value. Therefore, we conclude our only remaining task is to determine the property’s correct value. *Compiano*, 771 N.W.2d at 397 (“[T]he court makes its independent determination of the value based on all the evidence.”).

We turn first to Olson's appraisal. Olson developed the cost and sales comparison approaches to value. He testified he did not develop the income approach because, in his opinion, there were no rents of facilities like the subject property.

He developed the cost approach but testified he would not normally develop it because of the age of the subject improvements and the depreciation that needs to be considered. Olson's cost approach was based on atypical methodology. He estimated the RCN of the building and site improvements, to which he added his estimate of land value; he then applied a 90% depreciation rate to all components. Manternach and Ehler agreed land value should not be included in any measure of depreciation, nor should it be depreciated in the cost analysis because it is a non-wasting asset. We agree. By depreciating the site, Olson's conclusions are artificially low.

Moreover, we note the methodology he employed to determine the 90% depreciation was also flawed. First, his inclusion of the sales' site values when he was calculating depreciation is contrary to the description of the Market Extraction Method that is detailed in THE APPRAISAL OF REAL ESTATE. APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 605 14th ed. 2013). Second, Olson gave most consideration to Sale 3, which set the upper end of the range of total depreciation. Olson testified he did not confirm this sale with anyone involved in the transaction and later acknowledged the sale price per acre of \$16,000 would reasonably reflect the value of the land only. If this was true, he noted it should not be included in his analysis. If Sale 3 were removed from his analysis, the average rate of total depreciation by Olson's methodology is 82.3%. Without conceding it is correct, if Olson's methodology is applied with the lower depreciation rate, this would indicate a market value by the cost approach of roughly \$5,000,000.³

Based on the aforementioned flaws, we do not find Olson's cost approach to be a reliable indicator of the subject's fair market value. Given these flaws in his cost approach, the fact that it exceeds his opinion by the sales comparison approach causes us to question the reliability of his sales comparison approach.

³ \$28,000,000 RCN – 82.3% total depreciation (\$23,044,000) = \$4,956,000 value by the cost approach.

Olson's sales comparison analysis relied on the same sales he analyzed in his cost approach, as well as a fifth sale located in Waverly. Olson testified he gave Sales 2, 3, and 5 the most consideration in the sales comparison approach. As previously noted, we do not find Olson's Sale 3 a reliable indicator of value for an improved property because by Olson's own concession, it appears to represent a land sale, rather than an improved property with similar use and function as the subject property.

Olson's Sale 2 appears to be a normal transaction, but it offers minimal comparability to the subject property. It is the second smallest sale in the record and nearly 2.5 times smaller than the subject property. Olson considered it inferior to the subject property, and while it is a manufacturing facility, it is not a food-grade manufacturing facility like the subject, which requires significantly superior construction quality and details.

Even if we only considered the sales comparison approaches in the record, we find Olson's sales comparison approach is not the most persuasive. He relied on substantially smaller properties and none were food-grade manufacturing properties. Sales 1 through 4 were inferior construction quality – metal and steel frame compared to the subject's concrete tilt-up construction. We also find the discussion and explanation for his adjustments in his report lacking. He fails to demonstrate he considered and adjusted for all aspects that may affect a buyer's decision, such as wall height, mezzanine area as a percentage of GBA, the utility of the subject's rail spur, and so on. Even if he did consider these issues in his quality adjustments, there is no support within his report for the degree of adjustment.

For these reasons, we find Olson's appraisal is the least persuasive in the record and believe it undervalues the subject property.

Manternach developed all three approaches to value, testifying he would not rely on any single approach to conclude a reliable indication of value for the subject property.

Manternach's cost analysis applies a high rate of depreciation and obsolescence to the subject property but it was developed using recognized appraisal methodology. Regarding his income approach, Manternach believes all commercial and industrial

properties could be income producing, therefore he believes it is a valid approach to value. In his opinion, despite any imperfections of each approach to value, he believes they all merit consideration.

Manternach relied on five properties in his sales comparison approach. In contrast to Olson's comparables, Manternach's comparable properties offer more similarity in size to the subject. Rather than a lump-sum "quality" adjustment, Manternach made specific line-item adjustments to recognize differences between the subject property and comparables, including wall height, percent of finish and mezzanine area, and the utility of the rail spur. Although we also find a lack of support for the degree of adjustment in his report, at least his report identifies the specific adjustments he has made.

After adjustments, the sale prices per square foot ranged from \$13.75 to \$23.60, and reconciled to a price of \$17.00 square foot of main floor area; or \$13.59 per square foot when the total building area is considered. We also note the only sale in the record of a food-grade facility is Manternach's Sale 1, which sets the upper end of his adjusted range at \$23.60 per square foot. While PAAB is not inclined to rely on a single sale, applying its adjusted price per square foot, in accordance to Manternach's method, would result in an indicated value of roughly \$6,700,000.⁴

The lowest end of Manternach's range was set by the Terex sale that has been of significant dispute post hearing. Prior to the contention, Manternach had reservations about the sale and testified that if it were removed from his analysis, his conclusion of value by the sales comparison approach would increase. Nestlé asserts it is a normal transaction and the best indicator of the subject's value in the record. If considered, we note the unadjusted and adjusted sales price per square foot of this property exceeds Olson's per square foot value in his sales approach (\$7.50). This is another indication Olson's reconciled value is ultimately too low.

We recognize both appraisers made differing adjustments to this sale – Manternach's adjustments show he considered it inferior to the subject whereas Olson's adjustments indicate he found it superior. Given the lack of specificity regarding his

⁴ \$23.60 per square foot X 284,031 main level building area = \$6,703,132.

adjustments, we cannot determine if Olson accounted for differences between it and the subject; including, but not limited to, the fact that the Terex property is slightly older than the subject, with lower average wall height, and has significantly less mezzanine area.

We find Manternach's analysis to be the most thorough and persuasive evidence in the record. Moreover, we note his analysis is consistent with Brandon's testimony about the continued high-level maintenance of the subject facility and its continued operation.

Based on the foregoing, we find Manternach's appraisal to be the most persuasive and reliable indication of the subject property's correct fair market value as of January 1, 2017.

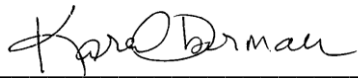
Order

PAAB HEREBY MODIFIES the Bremer County Board of Review's action and orders the total assessment for the subject parcels as of January 1, 2017, shall be set at \$4,900,000.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2017).

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



Karen Oberman, Board Member



Dennis Loll, Board Member



Elizabeth Goodman, Board Member

Copies to:

Daniel Manning for Nestlé by eFile

Kasey Wadding for Bremer County Board of Review by eFile

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